



STATE OF DELAWARE

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## **MEMORANDUM**

**TO:** The Chair and Commissioners

**FROM:** Lisa B. Driggins, Public Utilities Analyst

Handwritten initials "LBD" in a circle.

**DATE:** November 21, 2016

**SUBJECT:** IN THE MATTER OF THE APPLICATION OF OAK CREST FARMS  
PROPERTY OWNER ASSOCIATION, INC. FOR A CERTIFICATE OF PUBLIC  
CONVENIENCE AND NECESSITY TO PROVIDE WASTEWATER SERVICES  
PURSUANT TO 26 DEL. C. § 203D (FILED SEPTEMBER 26, 2016)  
**PSC DOCKET NO. 16-0937 "OAK CREST FARMS POA"**

On September 26, 2016, Oak Crest Farms Property Owners Association, Inc. ("Oak Crest Farms POA" or "the Company") filed an application ("Application") with the Commission requesting a Certificate of Public Convenience and Necessity ("CPCN") to provide its wastewater services to the community of Oak Crest Farms, located near the City of Lewes, Sussex County, Delaware ("Proposed Service Area"). Oak Crest Farms is an existing subdivision. The basis for the Application, therefore, is the Company's possession of signed petitions requesting wastewater services representing a majority of the properties comprising the Proposed Service Area as set forth in 26 Del. C. § 203D(d)(3).<sup>1</sup>

The Proposed Service Area mirrors the service area granted to Oak Crest Farms, Inc. on November 23, 2004 by PSC Order No. 6520 in PSC Docket No. 04-WW-005. At its November 15, 2016 meeting the Commission revoked the CPCN granted to Oak Crest Farms, Inc. in PSC Docket No. 04-WW-005 for failing to comply with the provisions of the law and failing to provide adequate or safe wastewater service to its customers within the Oak Crest Farms community.<sup>2</sup>

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<sup>1</sup> Specifically, 26 Del. C. § 203D(d)(3) states: "In the case of an existing development, subdivision, or generally recognized unincorporated community, 1 or more petitions requesting wastewater service from the applicant executed by the landowners of record of parcels and properties that constitute a majority of the parcels or properties in the existing development, subdivision or unincorporated community." In this case, the Company has presented signatures from 153 of 282 landowners requesting wastewater services, representing 93 of the 181 properties in the existing community, representing a majority at 51.38%.

<sup>2</sup> See PSC Order No. 8979 in PSC Docket No. 16-1029

Staff reviewed the Application in accordance with 26 *Del. C.* §203D and the Commission's *Regulations Concerning the Jurisdiction of the Public Service Commission to Grant and Revoke Certificates of Public Convenience and Necessity to Provide Wastewater Services*, 26 *Del. Admin. C.* §6002 (the "Regulations"). Oak Crest Farms POA included the following in its application: (1) petitions requesting wastewater services signed by the owners of a majority of the parcels of land comprising the proposed service area; (2) copies of the United States Postal Service forms verifying that the Company sent, via certified mail, a Commission approved notice to all landowners of record of each parcel included in the Proposed Service Area; (3) a list of the County tax map parcel identification numbers of the properties and identification of all landowners of record included in the Proposed Service Area; (4) a copy of the associated tax map clearly marking the Proposed Service Area; and (5) a copy of a letter from Sussex County approving the CPCN<sup>3</sup>. Staff found several deficiencies with the initial filed application. The Company has corrected the deficiencies and Staff now finds no errors or omissions during its review of the Application.

As required by the Regulations, Staff requested written comment from the Division of Water Resources of the Department of Natural Resources and Environmental Control ("DNREC"). DNREC replied it had no objection to the Commission granting a CPCN to Oak Crest Farms POA to provide wastewater treatment and disposal services for the parcels of land. Staff copied the County and the Delaware Office of State Planning (the "OSP") on its request for comment sent to DNREC.<sup>4</sup> The County received and reviewed the CPCN application and stated they will not object to a CPCN being approved for this project.

The OSP also responded (the "OSP Response") noting that the development is located within Level 4 areas which are defined as areas where the State investments will support agricultural preservation, natural resources protection, and the continuation of the rural nature of these areas and new development activities are not supported. Staff does not consider the OSP Response an objection to Commission granting the Application, but was instead provided to the Commission for information purposes of the State's future investment plans for the parcels included in the Proposed Service Territory.

Upon approval of the CPCN application, Oak Crest Farms POA will begin offering wastewater services. On November 18, 2016, Oak Crest Farms POA filed a proposed tariff with proposed rates. The proposed tariff mirrors the tariff approved for Oak Crest Farms, Inc., the

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<sup>3</sup> As required by the Regulations, an Application that extends services into the service territory of a municipality, government agency or wastewater authority *must* submit written documentation that such entity has been informed of and has approved such an expansion by the applicant.

<sup>4</sup> Under Commission rules, the utility is required to file a copy of its application with DNREC, OSP, and: "a) any county within whose boundaries the proposed service territory would be located; and b) any municipality, town or local authority: i) whose boundaries are adjacent to the proposed service territory; or ii) within whose boundaries or existing wastewater service territory the proposed service territory would be located." While written comment is only required from DNREC, by notifying the other agencies Staff can be alerted if an Application is not filed, or if there is a significant issue with an Applicant or Application that the Commission may wish to consider.

former holder of the CPCN in the Oak Crest Farms community. Staff has reviewed the proposed tariff and rates and given that they are, in a material manner, identical to those approved for Oak Crest Farms, Inc. Staff believes that the proposed tariff is just and reasonable.

In conclusion, the Application filed by Oak Crest Farm POA complies with all statutory and regulatory requirements, and Staff is not aware of any issue that would preclude the granting of the requested CPCN. Staff further notes that the Commission need take no action on the OSP Response because it is not an objection, but rather merely provides the Commission with information regarding the State of Delaware's future financial objectives with respect to the parcels included in the Proposed Service Territory. Therefore, consistent with statutory requirements, Staff recommends the Commission grant the Application. Staff further recommends that the Commission approve the proposed tariff as filed.